

## OFFICE HOURS AND LOCATION

Legal Aid of East Tennessee offices are open from 8:30 A.M. to 5:00 P.M.  
Monday through Friday.

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(865)637-0484

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Linea Gratis en Español 1-866-408-6573

No person in the United States shall, on the grounds of race, color or national origin, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

This pamphlet is intended for general information only. The circumstances of every case are different and need to be dealt with on a case-by-case basis. This is not a substitute for the advice of a lawyer. Also, the law may change and may be different from county to county.



FL 3/09



# ORDER OF PROTECTION

**INFORMATION FOR VICTIMS OF  
DOMESTIC VIOLENCE,  
SEXUAL ASSAULT AND STALKING**



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**Serving Bledsoe, Bradley, Blount, Carter, Cocke, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Polk, Rhea, Sequatchie, Sevier, Sullivan, Unicoi and Washington Counties.**

However, the abuser cannot be punished for the violation unless you enforce the order and appear at another court hearing. It is important that you call law enforcement immediately or shortly after the order was violated. Violating the order of protection may occur in any form that was stated in the order of protection (abuse, threats, visitation, etc.) If the violation is failure to pay child support, you may be able to contact the Child Support Enforcement Office in your area and get help.

If the police are not able to arrest the abuser you can go to the clerk's office where you filed the petition for the order of protection and file a paper telling the judge how the abuser violated the order of protection. The clerk will set a court date for you to appear in court, with witnesses you might have, and tell the judge what happened.

### **WHAT TO EXPECT FROM THE POLICE**

If a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic abuse, whether the crime is a misdemeanor or felony, or was committed within or without the presence of the officer, the preferred response of the office is arrest.

If a law enforcement officer has probable cause to believe that two (2) or more persons committed a misdemeanor or felony, or if two (2) or more persons make complaints to the officer, the officer shall try to determine who the primary aggressor was. The officer shall presume that arrest is not the appropriate response for the person or persons who were not the primary aggressor. If the officer believes that all parties are equally responsible, arrest is not the preferred response for any party, and the officer shall exercise his or her best judgment in determining whether to arrest any parties.

To determine who the primary aggressor is, the officer shall consider:

- (1) The history of domestic abuse between the parties;
- (2) The relative severity of the injuries inflicted on each person;
- (3) Evidence from the persons involved in the domestic abuse;
- (4) The likelihood of future injury to each person;
- (5) Whether one of the persons acted in self defense; and
- (6) Evidence from witnesses of the domestic abuse.

When a law enforcement officer investigates an allegation that domestic abuse occurred, the officer shall make a complete report and file the report with the officer's supervisor in a manner that will permit data on domestic abuse cases to be compiled.

When a law enforcement officer responds to a domestic call, the officer shall:

1. Offer to transport the victim to a place of safety such as a shelter or similar location, or the residence of a friend or relative, unless it is not possible for the officer to transport the victim, in which case the officer shall offer to arrange for transportation as soon as possible;
2. Advise the victim of a shelter or other service in the community; and
3. Give the victim notice of the legal rights available.

### **WHO DO I NEED TO SEE TO GET AN ORDER OF PROTECTION?**

To file for an order of protection you must go to the court clerk's office at the courthouse in the county where the abuse took place or where the abuser lives. The clerks in Circuit, Chancery and General Sessions courts of each county are required by law to have the order of protection forms and to help you fill them out. There are no filing and service of process fees for the order of protection. In the petition for the order of protection you must write down what happened, when it happened, and where it happened. After you have filled out the necessary information the forms will be given to the judge for approval of a temporary or ex-parte order. A temporary or ex-parte order may be approved by the judge with the judge reviewing the information you wrote in the petition for order of protection. It provides you with protection from further abuse. If the judge does not issue the ex-parte or temporary order of protection, you are still entitled to have the petition served on the abuser and a hearing to ask a judge for the order of protection. If the clerk tells you the judge did not approve your temporary or ex-parte order then ask the clerk to please have the petition served on the abuser and set your court date. If the clerk tells you that you do not get a court date or you cannot proceed with your petition for an order of protection please contact your local legal aid as soon as possible as this information is not correct.

### **WHAT HAPPENS AFTER I FILE FOR THE ORDER OF PROTECTION?**

The abuser will be served a copy of the petition for the order of protection and the temporary/ex-parte order by deputies of the sheriff's department. The abuser will also receive notice of the date and time of the hearing. The hearing is usually within 15 days after you have filed the petition. However, if the abuser has not yet been served with notice of the hearing date, the hearing date can be changed. He/she must receive the notice so as to have an opportunity to tell his/her side. You may call the clerk's office or the sheriff's department to find out if the abuser has been served. If the abuser has not been served with the petition for order of protection, the clerk can tell you if the case has been set for another date. If the clerk does not give you this information, then you **MUST APPEAR IN COURT ON THE DATE AND TIME THE CLERK TOLD YOU AND LET THE JUDGE CONTINUE THE MATTER.**

### **WAITING FOR THE HEARING**

#### **DO YOU NEED ALTERNATIVE SHELTER UNTIL THE HEARING?**

The temporary or ex parte order of protection does not order the abuser out of the home. The abuser is usually not forced to do this until the hearing. In some cases the abuser will leave the home after being served with the temporary or ex parte order of protection. If the abuser does not leave the home, the best thing to do is seek alternative shelter for yourself and your children to avoid further abuse. The alternative shelter may be friends, relatives, or a local shelter for abused women and their children. There are several shelters for abused women. Some of the shelters and the area they serve are listed in the back of this brochure.

The shelters receive victims of domestic violence twenty-four hours a day. The staff at each shelter is very helpful in giving support and advice during your crisis. The police will escort you to the shelter.

#### **HOW AM I PROTECTED DURING THIS TIME?**

If the court approved your temporary or ex-parte order of protection, the abuser, once served with the temporary or ex-parte order, or having actual knowledge of temporary or ex-parte order of protection must not contact or come around you. If the abuser violates the temporary or ex-parte order you need to call the police.

## **TEMPORARY OR EX PARTE ORDER OF PROTECTION**

The temporary or ex parte order of protection does not give you custody of your children. During the time you are waiting for a hearing on your order of protection you must use your own judgment for allowing visitation between the abuser and the children. Please keep in mind that if custody and visitation have not been set prior to this action, and you are married to the abuser, both parties have equal rights to the children until the matter has been decided by the court. For example, if the abuser fails to return the children after visitation with them, and there is no court order regarding custody of the children, then he/she is not violating any laws at this time. If you were never married to the abuser but have a child together, under Tennessee law, the mother has custody of the child unless there is a court order that says something different. If there is a court order regarding visitation you must follow the visitation order.

### **UNTIL THE HEARING**

After you file a petition for the order of protection you need to work on a safety plan. This plan sets out what you will do for safety if there is a problem with your abuser. You can get help with a safety plan from your local domestic violence shelter. During the days leading up to the hearing it is important for you to start preparing yourself mentally and physically for what will happen at the hearing. At this point the abuser may be very angry, so it is very important not to confront him/her with any situations which may lead into a fight. Keep in mind that a lot of abusers will seek reconciliation before the hearing so you will drop the order of protection and then return to the abuser after you have done so. If, during this time, you do reconcile with the abuser the best course of action is for you and the abuser to attend the hearing as scheduled and explain to the judge that you have reconciled.

If the abuser remains in the home during this time, do not worry about removing all of your belongings. Only take items that you will need while you are away. In getting these items out of the home, it would be best to wait until the abuser is away at work, etc., or ask for a policeman to be present while you do so.

### **THE DAY OF THE HEARING**

On the day of the hearing it is important to arrive at the courthouse on time. Allow yourself time to find the appropriate courtroom and time to sit and relax. Remember to stay calm and try not to get too upset at the time.

If you have small children or your children are not in school at the time of the hearing you need to leave them with a babysitter. The judge will not allow the children in the courtroom.

### **WHAT DO I NEED TO TAKE WITH ME?**

Take only the things that you feel will help you prove your case. Any evidence of the abuse such as: photos, hospital reports, and police reports should be taken. Let the judge know that you have these with you so that the judge may review them.

### **WITNESSES**

Witnesses can be a very important part of the evidence of abuse. Witness is defined as "one who saw, or can give a first hand account of something". If someone witnessed you being abused or saw you immediately after the abuse, it would be important to take them to court with you. Talk to your witnesses several days prior to the hearing so that they can make arrangements to be in court. If they will not agree to come to court you can ask the clerk to issue a subpoena to make them come to court.

A person who did not witness the abuse or did not see you after the abuse does not know enough about your situation to testify. The judge may or may not choose to listen to the testimony of the witnesses. This depends on whether or not the judge feels he/she already have the information he/she needs to decide the case.

### **WHAT DO I NEED TO TELL THE JUDGE?**

You may want to write down what you want to say to the judge so that you do not forget at the hearing. When you tell the judge what happened the judge will want to hear specific facts of abuse or threats. If it is threats which made you take action, give incidents and reasons why you feel the abuser will carry through with them.

Remember, the judge will do everything possible to make this process easy for you but you must present your case (evidence) and you **MUST ASK** for the relief that you want (stopping the abuse, child support, specific visitation, housing, etc.). The judge may also include in the order such things as your need for the family car and the need of a police officer to go with you to get your belongings.

### **WHAT HAPPENS NOW?**

#### **IF YOU WERE AWARDED THE ORDER OF PROTECTION**

If you are granted the order of protection, the judge will tell you what types of relief you are awarded. At this point you will need to go to the court clerk's office where you initially filed the order of protection and get a certified copy of the order. It is important to keep this copy of the order of protection with you at all times. The copy will tell you what forms of relief you were awarded and the specifics of such things as child support and visitation.

#### **IF YOU WERE NOT AWARDED THE ORDER OF PROTECTION**

The judge will also tell you if you are not granted the order of protection and the reason he/she is not granting it to you. If you do not agree with this decision do not argue with the judge. You will have to take a different course of action in protecting yourself from further abuse. You may file an appeal and have another court hear your case. You do not have to pay any costs for an appeal. There are alternatives to the order of protection. Some of these alternatives are a divorce, restraining order and assault warrant.

#### **VIOLATION OF THE ORDER OF PROTECTION**

Hopefully, when you are awarded the order of protection, the abuser will follow the order of the judge to stop any further abuse or threats of abuse to you. However, sometimes this action is not enough and the abuser may continue to harass and threaten you in violation of the order of protection. If the abuser violates the order you can call the law enforcement authorities in your area and tell them that the order is being violated, and the abuser can be arrested without a warrant. The clerk is required to give a copy of the order of protection to the sheriff and police departments to keep on record. If the abuser is arrested, the abuser will have to appear in court. You will be required to be present to testify to the violation. You may call the law enforcement authorities that arrested the abuser or the clerk's office in which you filed the order of protection and they will be able to tell you when and where the hearing will take place. You do not need an attorney. You simply tell the judge why you had to call the police and how the abuser violated the order. This course of action is necessary for the order of protection to be effective. If you fail to do any of this the abuser will probably continue to threaten you.

**WHAT IS AN ORDER OF PROTECTION?**

An order of protection is an order of the court, signed by the judge, ordering the abuser to stop abusing or threatening to abuse you and your minor children.

An order of protection is not limited to only protecting you. It might also provide such services as:

1. Ordering the abuser to leave the home or to provide you with another home.
2. Awarding temporary custody of the children.
3. Awarding temporary visitation rights with your children.
4. Awarding temporary support for you and your children.
5. Awarding pets to victims.

These are just a few reliefs that may be granted in the order of protection. There are more types of relief which may be asked for depending on each individual case. Please keep in mind that none of this relief will be granted until a hearing; only protection against physical violence will be given at the time of the initial application for an order of protection.

**WHO IS ELIGIBLE TO GET AN ORDER OF PROTECTION?**

1. A "victim" or persons eligible to get an order of protection as set out in the law include the following:
  - A. Adults or minors who are current or former spouses;
  - B. Adults or minors who live together or who have lived together;
  - C. Adults or minors who are dating or who have dated or who have or had a sexual relationship, (as used herein "dating" and "dated" do not include fraternization between two (2) individuals in a business or social context);
  - D. Adults or minors who are related by blood or adoption;
  - E. Adults or minors who are related or were formerly related by marriage; or
  - F. Adult or minor children of a person in a relationship that is described in Sub items (A) through (E) above.
2. Sexual assault victim – any person, regardless of the relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of any form of rape or sexual battery.
3. Stalking victim – any person regardless of the relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of offense of stalking.

Orders of protection are enforceable in all counties in Tennessee regardless of where you get your order of protection. Orders of protection obtained in other states are enforceable in Tennessee. Orders of protection obtained in Tennessee are good in other states. You need to register the order by taking it to the local police department wherever you are living.

**DEFINITIONS**

1. **Abuse** – Inflicting or attempting to inflict personal injury on an adult or minor by other than accidental means, placing an adult or minor in fear of physical harm, physical restraint, or malicious damage to the personal property of the abused party.
2. **Adult** – Any person eighteen (18) years of age or older, or who is otherwise emancipated.
3. **Petitioner** – Person alleging domestic abuse, sexual assault or stalking in a petition for an order of protection.
4. **Preferred Response** – Means law enforcement officers shall arrest a person committing domestic abuse unless there is a clear and compelling reason not to arrest.
5. **Respondent** – Person alleged to have abused, sexually assaulted or stalked another in a petition for an order of protection.

**SHELTERS**

<b>Abuse Alternatives, Bristol</b>	<b>423-764-2287</b>
<b>CEASE, Hamblen County</b>	<b>423-586-0692</b>
<b>CHIPS, Unicoi, Carter &amp; Greene Counties</b>	<b>423-735-0022</b>
<b>Family Crisis Center, Knox County</b>	<b>865-637-8000</b>
<b>Haven House, Blount County</b>	<b>865-982-1087</b>
<b>Harbor Safe House, Bradley and Polk County</b>	<b>423-476-3886</b>
<b>Iva’s Place, Loudon County</b>	<b>865-988-7867</b>
<b>Safe House, Sullivan County and Kingsport</b>	<b>423-246-2273</b>
<b>Safe Haven, Johnson County</b>	<b>423-727-1914</b>
<b>Safe Passage, Washington County</b>	<b>423-232-8920</b>
<b>Safe Space, Sevier County</b>	<b>800-244-5968</b>
<b>Serenity Shelter, Knox County</b>	<b>865-673-6551</b>
<b>H.O.P.E. Center, McMinn and Meigs County</b>	<b>423-745-5289</b>
<b>Salvation Army, Knox County</b>	<b>865-525-9401</b>
<b>Shepherd’s Inn, Carter County</b>	<b>423-542-0180</b>
<b>Safe Haven Sexual Assault-Upper East Tennessee, Knox Blount, Loudon and Sevier Counties</b>	<b>865-522-7273</b>
<b>Partnership for Families, Children and Adults, Hamilton County</b>	<b>423-755-2700</b>